

Survival and Surpassing, by Ilmar Tammelo, The Hawthorn Press, Melbourne, 1971, 131 p. \$4.50.

Professor Tammelo, a brilliant legal scholar, who gained international reputation for his pioneering work on the application of modern logic in the field of law (*Outlines of Modern Legal Logic*, Wiesbaden 1969), has now written a notable book entitled "*Survival and Surpassing*". The contents as well as the structure of this work, written in a poetic and fascinating style, are original.

In his book, the author examines the intellectual conditions which must be fulfilled for being able to talk dispassionately about the world problems. The value to which discussions on these problems are normally focussed is "justice". He does not deal with a specified theory of justice but with the rational conditions to which such theory has to correspond.

In the first part of the book entitled "Soliloquies in the Metaphysics of Justice", the author gives the following working definition of justice: "*Justice is the positive ethical value by which one's due is accorded in normatively bilateral situations*" (p. 9). Nonetheless it remains necessary to determine the rational criteria to which the "*suum cuique*" has to correspond. In the Third Monologue entitled "Material Justice and Neutral Being" it becomes crystal clear that both an absolute pessimism (which animates the First Monologue) and an absolute optimism (which animates the Second Monologue) are untenable. They constitute only possible points of view with respect to "material justice". Only a rational attitude can successfully solve the world problems. An argumentative procedure called "paraduction", which involves a principled weighing of pros and contras, is an excellent method to that end. Hence a rational argumentation will decide upon the solidity of the value judgments. A rational attitude demands a radical scepticism or a relativism as a point of departure.

In the second part of his book entitled "Albigensian Encounters" the author argues that the unfolding of rationality can happen only through an effective human communication. In the Prelude to the second part ("The Concept of Human Communication") he lays out a metatheory of communication by which the language is shown to be the most important means of communication. In the First Encounter ("Man, Law, and Human Communication") he shows that an effective communication might be hindered by psychoses as well as by neuroses and that ignorance is a major hindrance for dispassionate communication. In view of these factors law has to be reconstructed and rethought all the time.

In the Second Encounter ("Communication and Commitment") the author points out that communication is disturbed by unquestioned acceptance of value judgments. This factor is extremely relevant to lawyers, whose specialisation in one field of the law or work with one specific legal system could distract them from their real lawyerly work. In the Third Encounter ("Science, Communication, and Political Power") he argues that scientists who strive for finding the truth are disturbed in their communication because of unconditional acceptance of ideologies or "isms". In the Finale "Justice, Communication, and World Order" the author submits that various problems of our time arise from an underlying problem—that of the quality versus the quantity of human life. These problems can successfully be solved only within the framework of a proper world organisation: "*If survival is a positive value, man must free himself from the anchorage of his habitual convictions and from the spell of his beguiling dreams wherever there is an occasion for giving reason a chance to assert itself in individual or social life*".

Survival and Surpassing is a book about "justice". Each theory of justice must be rationally founded and be communicable. Value judgments based on

trans-empirical ideas provenant from positive religions or from mere beliefs in a better world are irrational. Metaphysics as such has no place in a discussion on the world problems and justice.

This position allows the author to stay intellectually free and to be guided only by what proves tenable in the light of rational argument involving paraductive reasoning.

The book under review is recommended to all readers in all countries who are interested in legal and political philosophy.

G. MOENS*

Freedom in Australia (2 Rev. Ed.), by Enid Campbell* and Harry Whitmore.** Sydney, Sydney University Press, 1973, xi + 275 pp. A\$15.00 (clothbound), A\$10.00 (paperback).

This work was a pioneer of the concern of Australian legal scholarship in 1967, at a comparatively early stage of the contemporary civil libertarian fashion. Its second revised edition, after an earlier reprint of 1968, is all the more to be welcomed, for the intervening years have been crammed with a sequence of demands and responsive statutes, decisions and changing public attitudes, at a pace quite unprecedented in common law countries. It is not surprising, in these circumstances, and it is a tribute to the concern and dedication of the authors, that they have found it necessary and possible virtually to rewrite and greatly enlarge the work for the present revised edition.

Partly because of this revision and a considerable enlargement, the book may overleap the modest original design of the authors. This is to produce a book for "non-lawyers" about "what the laws of Australia do both to protect [the individual's] freedoms and to restrict them" (p. vii). Perhaps, their hope that they could assume in their readers "a rudimentary knowledge of the institutions and constitutional framework of Australian government and of the sources of the law" (p. vii),¹ was too demanding in that few laymen have even that "rudimentary" knowledge of our complex federal system. There is, of course, a danger that a book which is too esoteric for laymen may fall between the stools and also be too simple for lawyers.² But the wide sweep of its concerns, and the marshalling of a great variety of materials to these concerns, make it a valuable introduction to a growing and growingly complex body of law and practice.

The authors have confined their task to examining the impact of Australian law upon the "classical" freedoms: that is, to discussion and evaluation of individual rights and responsibilities in relation to the police,³ the censors,⁴ the security of the state⁵ and those who wield private and public power.⁶ This

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¹ These basics were not merely assumed in the first edition of the book, but were briefly explained in the "Introduction." E. Campbell & H. Whitmore, *Freedom in Australia* 1-11 (1st ed. 1966).

² The footnotes, substantially of academic interest, happily, appear at the foot of each page, rather than being relegated to the end of the book, as was done in the first edition. For the academic, this is a most worthwhile improvement on the score of convenience.

³ E. Campbell & H. Whitmore, *Freedom in Australia* chs. 1-12 (2d rev. ed. 1973).

⁴ *Id.* chs. 13-15.

⁵ *Id.* chs. 16-19.

⁶ *Id.* chs. 20-24.